

**QUESTIONS/COMMENTS FROM INDUSTRY ON THE FINAL RFP FOR THE WEST VALLEY PHASE 1
DECOMMISSIONING – FACILITY DISPOSITION PROCUREMENT AND THE GOVERNMENT’S RESPONSES**

No.	Final RFP Section	Industry Question/Comment	Government Response
308.	Section H.48(B)	<p>States in pertinent part, “As the formal inventories are completed, the contractor shall assume responsibility and liability for subsequent losses and damages.” Under FAR 52.215-8, this item would take precedence over the “Property” and the “Limitation of Liability—Services” clauses. The “Property” clause, at section 52.245-1(h) states—</p> <p style="padding-left: 40px;">(h) <i>Contractor Liability for Government Property.</i> Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage or destruction to the Government property furnished or acquired under this contract, except when any one of the following applies—</p> <p style="padding-left: 80px;">(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with <u>31.205-19</u>.</p> <p style="padding-left: 80px;">(ii) The loss, theft, damage or destruction is the result of willful misconduct or lack of good faith on the part of the Contractor’s managerial personnel.</p> <p style="padding-left: 80px;">(iii) The Contracting Officer has, in writing, revoked the Government’s assumption of risk for loss, theft, damage or destruction, due to a determination under paragraph (g) of this clause that the Contractor’s property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, theft, damage or destruction of Government property occurred while the Contractor had adequate property management practices or the loss, theft, damage or destruction of Government property did not result from the Contractor’s failure to maintain adequate property management practices, the Contractor</p>	<p>The liability regime as set forth in FAR 52.245-1, PROPERTY, and FAR 52.246-25, LIMITATION OF LIABILITY – SERVICES, is not changed as a result of Clause H.48 in terms of the protection afforded to the Contractor. The purpose of Clause H.48 is to ensure that the Phase 1 Contractor has an adequate system in place to accept full accountability for all high-risk and sensitive property at the end of the transition period and to maintain the real and personal property inventory throughout the contract period.</p>

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		<p>shall not be held liable.</p> <p>The “Limitation of Liability—Services” clause also protects the Contractor against liabilities growing out of damage to Government property.</p> <p>Is it the intent of the Government to change, through H.48 (B), the liability regime as set forth in the “Property” and “Limitation of Liability—Services” clauses?</p>	
309.	Clause B.2.6.d.iii	Clause B.2.6.d.iii appears to have an error. Award Fee is not subject to potential increases due to performance on PBIs, so the Maximum Award Fee should be calculated based on the maximum fee that can be proposed (10%) rather than the maximum fee that can be earned (12%). This would make Maximum Award Fee be 2.0%, not 2.4% as currently shown. Please clarify.	DOE intends to maintain the split for the Total Contract Target Fee to be proposed by Offerors of 50% for Target Schedule Incentive Fee, 30% for Target Cost Incentive Fee and 20% for Target Award Fee. However, the subject fee limitations in B.2.6.d are not considered to be applicable to the Total Contract Maximum Fee equal to 12% of the Total Contract Target Cost and will be deleted via Amendment 003 to the Request for Proposals.
310.		The SF328 relative to FOCI provided in the RFP states that it “Expires Sep 30 2007.” A newer version is available online but would not be the form provided in the RFP. Should we use the expired SF328 form that is provided or is it acceptable to use the newer version?	The most current Standard Form 328 with an expiration date of May 31, 2011, will be incorporated into the Request for Proposals as Attachment K-1 via Amendment 003.
311.	Section L.5	<p>Section L.5 states that “The Offeror’s proposed direct labor rates for incumbent employees shall be at least the applicable DOE-provided average direct labor rates for all incumbent workforce employees (see documents titled ” Incumbent Employees Average Labor Rates”).</p> <p>Can DOE provide labor category descriptions or position descriptions for the Job Titles listed on the document titled Incumbent Employees Average Labor Rates”?</p>	No labor category descriptions or position descriptions exist for the Job Titles listed in the document entitled “Incumbent Employees Average Labor Rates.” DOE considers the information already provided to be sufficient to enable Offerors to prepare competitive proposals that reflect the requirements of the Performance Work Statement. The requirement for the Contractor to provide equivalent pay and comparable benefits to incumbent employees is stated in Clause H.11, EMPLOYEE COMPENSATION: PAY AND BENEFITS. In addition, the Contractor is required to give a first preference in hiring for vacancies in non-managerial positions to qualified incumbent employees. The incumbent employees that the Contractor chooses to retain will be dependent on its proposed technical approach and organizational structure.
312.	Clause B.2	In an environment where DOE/Contractor teaming and cooperation will be essential to project success as noted in	DOE will consider its relationship with the Phase 1 Contractor to be very important to the successful completion of all milestones

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		<p>clause H.32 (partnering), the proposed incentive structure will instead drive an adversarial relationship. By tying all schedule incentives to performance on the final, unrelated milestone, Contractors will be required to document and request equitable adjustment for every instance of DOE-caused delay over the seven-year contract.</p> <p>Additionally, the incentive structure for the overall project can become "broken" if issues early in the project put the cost and schedule milestones at risk. Because the vast majority of the fee is earned in the last three years of the contract, early project issues which may present a challenge to meeting the schedule milestones or cost incentive fee could have the effect of leaving only the award fee element left as the incentive under the contract.</p> <p>Lastly, the provisional tie of schedule milestones 1, 2, and 3 to the unrelated Milestone 4 put a very high degree of risk upon all the schedule incentive fees. With the potential for milestone 4 to eliminate the otherwise earned fee for milestone 1,2,and 3, even when the government receives the full benefit of the results embodied in meeting milestones 1,2,and 3 does not seem to be an equitable reward for the contractor who achieves those milestones.</p> <p>Will DOE revise the incentive fee structure so that performance of each milestone stands on its own merit thereby deleting Adjustment 6 given on page 5 of the Amendment?</p>	<p>under the Phase 1 Decommissioning – Facility Disposition contract and fostering a cohesive partnership is “key” to this success. However, it is DOE’s intent to utilize a fee structure that incentivizes the Contractor to employ effective mechanisms to stay within schedule and cost for all milestones throughout the contract period and to reward the Contractor for outstanding cost and schedule performance. DOE’s emphasis on Milestone 4 is intended to convey how important the successful completion of this milestone is to the Contractor. Although the fee structure places the schedule incentive fee earned for Milestones 1, 2 and 3 at risk based on the Contractor’s performance on Milestone 4, DOE considers the \$80,000 that the Contractor can earn in additional fee for each day that this milestone is successfully completed in advance of its target completion date to be more than adequate to compensate the Contractor for any risk to fee already earned. Based on this analysis, DOE has determined that the revised fee structure is in the best interest of the Government and that removing Adjustment 6 will not result in a fee structure that adequately incentivizes the Contractor to complete Milestone 4 to its satisfaction.</p>
313.	Section L, Attachment L-1	Attachment L-1, Resume Format, indicates that references on the resumes should be from “Current and at least two (2) previous employers or positions.” Would DOE consider expanding the range of potential references to include clients and regulatory/stakeholder references? In some cases, potential Key Personnel may have only worked for one employer during their career. We believe that a broader range of references would provide DOE with more objective feedback on performance of the individuals and provide the perspective of how well these individuals have served their	DOE will contact references only as necessary to verify employment. DOE will not ask any of the references for feedback regarding how well the Key Personnel performed their duties or served their clients.

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		clients.	
314.		After reviewing the West Valley Export Controlled and Official Use only Information, we have been unable to find GSA vehicles, IT equipment such as Servers, Desktop Computers, Printers, Copiers, Software Licenses, and other office equipment in that data. Would you please provide?	<p>DOE will provide a list of GSA-leased vehicles in the Documents Library for the West Valley Phase 1 Decommissioning – Facility Disposition procurement web site. According to the current procedures that are in place, the incumbent contractor is not required to report any property with an acquisition value of less than \$5,000 unless it is laboratory equipment, computers or miscellaneous equipment with an acquisition cost of at least \$1,000 or considered "Sensitive Property". Any property meeting this definition is not included in any of the property lists.</p> <p>The incumbent contractor has a tool crib from which all tools are administratively controlled and tracked. When the tools are issued to an individual it is recorded in an electronic system to show the individual to whom the tool was issued. However, the tools are not included in any of the property lists provided.</p>
315.	Section B	In our review of the award fee, it is not apparent that the award fee can be increased up to the maximum 2.6% based on the overall maximum fee of 12%. Will the award fee plan contain a method whereby the contractor can increase their award fee up to the maximum?	DOE intends to maintain the split for the Total Contract Target Fee to be proposed by Offerors of 50% for Target Schedule Incentive Fee, 30% for Target Cost Incentive Fee and 20% for Target Award Fee. However, the subject fee limitations in Section B.2.6.d are not considered to be applicable to the Total Contract Maximum Fee equal to 12% of the Total Contract Target Cost and will be deleted via Amendment 003 to the Request for Proposals.
316.	Clause B.2	The Schedule Incentive Fee adjustments 1, 2 & 3 are silent regarding a floor to the amount of downward impact of each adjustment. Will DOE consider setting a floor for each of these adjustments so that these adjustments cannot reduce fee on the related milestone below \$0? This change would create a more equitable balance in the financial risk and reward that DOE and its selected contractor will manage during the execution of the project.	Section B.2.6.d states that the Minimum Schedule Incentive Fee is 0% of the Total Contract Target Cost.
317.	Clause B.2	Will DOE consider eliminating Adjustment 6 which has the potential to erode Schedule Incentive Fee from Milestones 1, 2 & 3 down to \$0? This change would provide schedule performance incentives to the contractor and provide equitable balance to the risk/reward equation for DOE and its	DOE has determined that the revised fee structure is in the best interest of the Government and that removing Adjustment 6 will not result in a fee structure that adequately incentivizes the Contractor to complete Milestone 4 to its satisfaction. DOE considers the \$80,000 that the Contractor can earn in additional

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		selected contractor.	fee for each day that Milestone 4 is successfully completed in advance of its target completion date to be more than adequate to compensate the Contractor for any risk to fee already earned.
318.	Clause B.2	<p>The new fee structure identified in Clause B.2 of Amendment 001 is a dramatic change from the original RFP and will require contractors to re-evaluate previous bid/no-bid decisions. The fee on the contract is extremely back-end weighted, with at least 50% of the fee for the total contract not available until contract completion (30% from the cost incentive and 20% from Milestone 4). Additionally, due to the provisions in Adjustment 6, which allows the schedule incentive fees for all four milestones to be reduced to \$0 based on the performance of Milestone 4, the fee earned from previous milestones cannot be considered fully earned, and therefore reflected in a company's financials, until the completion of Milestone 4. In effect, this provision makes 80% of the total contract fee unearned until contract completion—only the award fee can be earned and booked throughout the period of performance of the contract. Even if Contractors bid the maximum allowable fee of 10%, the maximum return on investment for the first several years of the contract is 2% (20% award fee allocation of 10%). After factoring in the non-reimbursable costs associated with the project, potential fines and penalties, and the cost of working capital (because DOE is not providing a letter of credit), there is the potential to have no profit or even lose money in those years. From a business perspective, this fee structure is untenable and could easily drive contractors to make a “no-bid” decision.</p> <p>Will DOE consider the following:</p> <ul style="list-style-type: none"> – Amending the fee structure to provide an annual Cost and Schedule Incentive based on earned value or interim milestones? – Amending the fee structure to provide Cost Incentive based on cost associated with the four milestones rather than a single objective at the end of the contract? – Removing Adjustment 6 so that fee earned from the 	<p>Section B.2.7 entitled “Provisional Fee Payment” was incorporated into the Request for Proposals via Amendment 002. The Contractor will be able to bill for schedule incentive fee and cost incentive fee quarterly. DOE has also determined that the revised fee structure is in the best interest of the Government and that removing Adjustment 6 will not result in a fee structure that adequately incentivizes the Contractor to complete Milestone 4 to its satisfaction. DOE considers the \$80,000 that the Contractor can earn in additional fee for each day that Milestone 4 is successfully completed in advance of its target completion date to be more than adequate to compensate the Contractor for any risk to fee already earned.</p>

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		performance of Milestones 1, 2, and 3 can be is not provisional based on the performance of Milestone 4?	
319.	Clause B.2	Clause B.2.6.d.iii appears to have an error. Award Fee is not subject to potential increases due to performance on PBIs, so the Maximum Award Fee should be calculated based on the maximum fee that can be proposed (10%) rather than the maximum fee that can be earned (12%). This would make Maximum Award Fee be 2.0%, not 2.4% as currently shown. Please clarify.	DOE intends to maintain the split for the Total Contract Target Fee to be proposed by Offerors of 50% for Target Schedule Incentive Fee, 30% for Target Cost Incentive Fee and 20% for Target Award Fee. However, the subject fee limitations in B.2.6.d are not considered to be applicable to the Total Contract Maximum Fee and will be deleted via Amendment 003 to the Request for Proposals.
320.	Clause B.2	In our review of the award fee, it is not apparent how the award fee can be increased up to the maximum 2.4% based on the overall maximum fee of 12%. Will the award fee plan contain a method whereby the contractor can increase their award fee up to the maximum?	The fee limitations in B.2.6.d are not considered to be applicable to the Total Contract Maximum Fee and will be deleted via Amendment 003 to the Request for Proposals. The Contractor will be able to achieve the Total Contract Maximum Fee by any combination of increases to Schedule Incentive Fee and its Cost Incentive Fee pursuant to the parameters specified in Clause B.2 of the Request for Proposals.